

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

April 13, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 05HD-087

Island of Hawaii

Cancellation of Revocable Permit No. S-7085 to Kau Agribusiness Company, Inc.;  
Issuance of Revocable Permit to Edmund C. Olson, Trustee of the Edmund C.  
Olson Trust II for Use of Water from Noguchi Tunnel; Wood Valley and Kau  
Forest Reserve, Kau, Hawaii, Tax Map Keys: 3<sup>rd</sup>/ 9-6-06: 15, 16, 17, 18; 3<sup>rd</sup>/ 9-6-  
07: 02; 3<sup>rd</sup>/ 9-6-08: 39, 45, 46 and 3<sup>rd</sup>/ 9-7-01: 01, 18

APPLICANT:

Edmund C. Olson, Trustee of the Edmund C. Olson Trust II dated August 21, 1985,  
whose business and mailing address is 11560 Tennessee Avenue, West Los Angeles,  
California 90064.

LEGAL REFERENCE:

Sections 171-13 and -55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of lands situated at Wood Valley within the Kau Forest Reserve, Kau,  
Hawaii, identified by Tax Map Keys: 3<sup>rd</sup>/ 9-6-06: 15, 16, 17, 18; 3<sup>rd</sup>/ 9-6-07: 02;  
3<sup>rd</sup>/ 9-6-08: 39, 45, 46 and 3<sup>rd</sup>/ 9-7-01: 01, 18, as shown on the attached map  
labeled Exhibit A.

ZONING:

State Land Use District: Agriculture/Conservation  
County of Hawaii CZO: AG-20/Not Applicable

**TRUST LAND STATUS:**

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

**CURRENT USE STATUS:**

Encumbered by Revocable Permit No. S-7085, Kau Agribusiness Company, Inc., Lessee, for the purposes of taking water from the Noguchi Tunnel and other ancillary tunnels along the flume system leading to Keaiwa Reservoir. The permit is basically for the taking of water from former plantation water sources that transmits through a flume system beginning at Noguchi Tunnel and terminating at Keaiwa Reservoir.

Noguchi Tunnel is also encumbered by a second Revocable Permit No. S-7267 to Wood Valley Water Cooperative (WVWC) for the purposes of taking water from the tunnel. WVWC takes water from the Noguchi Tunnel for irrigation and potable purposes using a system that was established by the plantation. WVWC has worked with the Department of Health and staff has confirmed that WVWC will officially be recognized as a "Public Water System" on January 1, 2005. According to the Dept. of Health, WVWC has met their requirements for classification as a public water system and has implemented the necessary water monitoring program pursuant to DOH's conditions.

**CHARACTER OF USE:**

Development, diversion and use of water from the Noguchi and other ancillary tunnels within the Kau Forest Reserve that feed the Noguchi Tunnel irrigation system that begins at the Noguchi Tunnel and terminates at the Keaiwa Reservoir.

**COMMENCEMENT DATE:**

Upon cancellation of Revocable Permit No. S-7085 and on the first day of the month to be determined by the Chairperson.

**MONTHLY RENTAL:**

The same rental rate as Revocable Permit No. 7085 shall be used for the new permit. The rent shall be \$13.00 per month or \$5.00 per million gallons of water taken per year, whichever is greater, being rental due and payable on the first day of each and every month.

COLLATERAL SECURITY DEPOSIT:

Twice the monthly rental.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

Although the tunnel and portions of the flume system are in the forest reserve and within the conservation district, the improvements are existing and this action is merely a cancellation and re-issuance of a permit for the same system.

DCCA VERIFICATION:

Not applicable. Trusts are not required to file with DCCA.

REMARKS:

In 1997, the State legislature authorized \$500,000 for the design and construction of a Kau Agricultural Water System aka Kau Water Project. The funds were routed through the County of Hawaii, Department of Research and Development who then issued a Request for Proposal (RFP) in March 1997.

As a result of a competitive RFP, Kau Agribusiness was awarded the funds and a Kau ater Project Agreement was executed by both Kau Agribusiness and the County of Hawaii on June 10, 1998. The bulk of the funds were used to restore the flume system, repair portions of the Keaiwa Reservoir, construct a new smaller reservoir near the Keaiwa Agricultural Lots together with transmission lines, and other miscellaneous improvements associated with the transmission of agricultural water from the Noguchi Tunnel and Keaiwa Reservoir. All improvements were mutually agreed upon between the County of Hawaii and Kau Agribusiness.

The Kau Water Project Agreement has continuing obligations and conditions on the part of Kau Agribusiness. Kau Agribusiness has recently sold the bulk of their landholdings that benefit from the irrigation water from the Noguchi Tunnel. As a result, Kau Agribusiness, Edmund C. Olson, Trustee of the Edmund C. Olson Trust II dated August 21, 1985 and the County of Hawaii all executed an Assignment of Water Project Agreement, Consent and Release dated April 12, 2004 transferring all remaining and continuing obligations under the agreement to the Applicant.

Given the foregoing, Kau Agribusiness Co., Inc., a C. Brewer Company, has requested that the State terminate Revocable Permit No. S-7085 for use of water from the Noguchi Tunnel and re-issue a similar revocable permit for the same purpose to the Applicant.

Several years ago, the department held several meetings with Kau Agribusiness and the WVWC attempting to resolve differences in the allocation of water from the Noguchi Tunnel. As a result of those meetings, it was apparent that there was no shortage of water based on current consumption by both parties and the argument was over future water allocation. With the Board only issuing a revocable permit for water to both parties, there was no point in the State getting in the middle of the argument at that time.

Kau Agribusiness and the County of Hawaii also had liability concerns due to the potable use of water by the WVWC. In response, the WVWC has worked with the Department of Health in complying with their requirements for the operation of a public water system. As a result of their compliance, the Department completed Revocable Permit S-7267 to the WVWC in 2004.

With changes in Kau Agribusiness staff and the sale of its landholdings to the Applicant, the working relationship with the WVWC appears to have improved significantly. During meetings held in early 2004, staff made it clear to both Kau Agribusiness and the WVWC, that both parties need to come to agreement on the mutual management of the Noguchi Tunnel source and that the department would not allow two permits to the same tunnel to continue indefinitely. It is staff's intent to encourage, urge, or if need be, force the parties to restructure the use of Noguchi Tunnel into a single permit with a mutual agreement on its operation and management. The State should not have to be a mediator in the middle of two private parties using water from a single tunnel source under a month-to-month agreement. Should the parties fail to formulate a plan to cooperatively use the water from Noguchi Tunnel under a single entity or permit, within 12 months of the issuance of this permit, staff plans to bring the issue back to the Board with a recommendation for a single permit conditioned upon the parties develop an agreement for mutual management of the source or face revocation of both permits.

For the long term, staff has encouraged the Applicant, WVWC and other permittees to other water sources in Kau to seek the involvement of the Department of Agriculture or the Agricultural Development Corporation in the development, operation and management of these former plantation irrigation water systems in Kau. Staff feels that it would be a better permanent solution to the need for agricultural water in Kau, instead of revocable permits to private parties or an auction of water licenses that may result in certain users to lose their access to water.

In the interim, staff is recommending approval of the current request to terminate Revocable Permit No. S-7085 to Kau Agribusiness and re-issue a new revocable permit to the Applicant. Although the WVWC submitted a letter (Exhibit B) with recommended conditions to the new permit to the Applicant, staff urged both parties to work out their

concerns before consideration by the Board. As stated earlier, staff has made it clear to both parties that it is the State's expectations that they formulate a cooperative entity or management plan to operate under a single permit or face loss of both permits. Under a revocable permit, it is not the State's role to play mediator between the parties.

Subsequently, WVWC submitted a letter dated November 25, 2005 indicating no objections to a new permit to the Applicant.

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

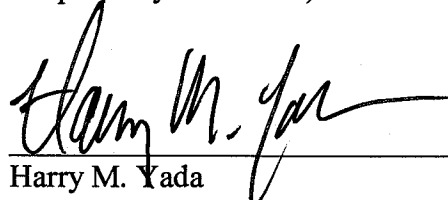
The submittal was circulated to the standard agencies and no significant comments were received.

**RECOMMENDATION: That the Board:**

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the termination of Revocable Permit No. S-7085 to Kau Agribusiness, Inc. subject to the following:
  - a. The date of termination shall coincide with the commencement of the revocable permit to the Applicant;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize the issuance of a revocable permit to Edmund C. Olson, Trustee of the Edmund C. Olson Trust II dated August 21, 1985, covering the subject area for the taking, diversion and use of water from the Noguchi and other ancillary tunnels within the Kau Forest Reserve that feed the Noguchi Tunnel irrigation system that begins at the Noguchi Tunnel and terminates at the Keaiwa Reservoir under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

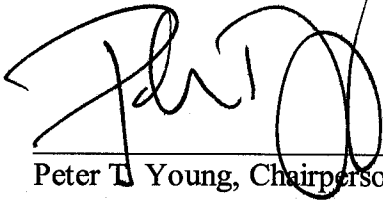
- a. The Applicant shall consult with the Commission on Water Resource Management on any permits it may require related to the Applicant's use of water from the sources that feed into the Noguchi Tunnel water system;
- b. In connection with its operation and maintenance of the water system, the Applicant shall consult with the Division of Forestry and Wildlife on any access or management issues within the Kau Forest Reserve;
- c. The Applicant shall be responsible for obtaining any necessary Conservation District Use Permits, should it need to do any major repairs or restoration work on the water system within the Kau Forest Reserve or other areas zoned Conservation;
- d. The Applicant shall be responsible for the installation of a water metering system or other alternative type of measuring system acceptable to the department. The water metering system or alternative type of measuring system is subject to the Chairperson's approval prior to its installation;
- e. The Applicant shall be responsible for providing monthly gallonage reports to the Department together with the appropriate payment based on the gallonage and rate determined by the staff appraiser;
- f. If any water is utilized for domestic potable purposes, such uses must meet applicable Department of Health standards and such compliance shall be the responsibility of the Applicant;
- g. The Applicant shall continue to provide water to farmers and ranchers that have historically received water from the Noguchi Tunnel Water System with the right to charge these parties the actual pro-rata cost of operating and maintaining the system; and
- h. To the extent possible and as may be feasible within the limitations of the current source and delivery system, the Applicant shall provide water to other landowners that may request access to water;
- i. Standard terms and conditions of the most current revocable permit document form, as may be amended to reflect the use of the water and other special terms and conditions as may be deemed appropriate;
- j. Review and approval by the Department of the Attorney General; and
- k. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Harry M. Yada", written over a horizontal line.

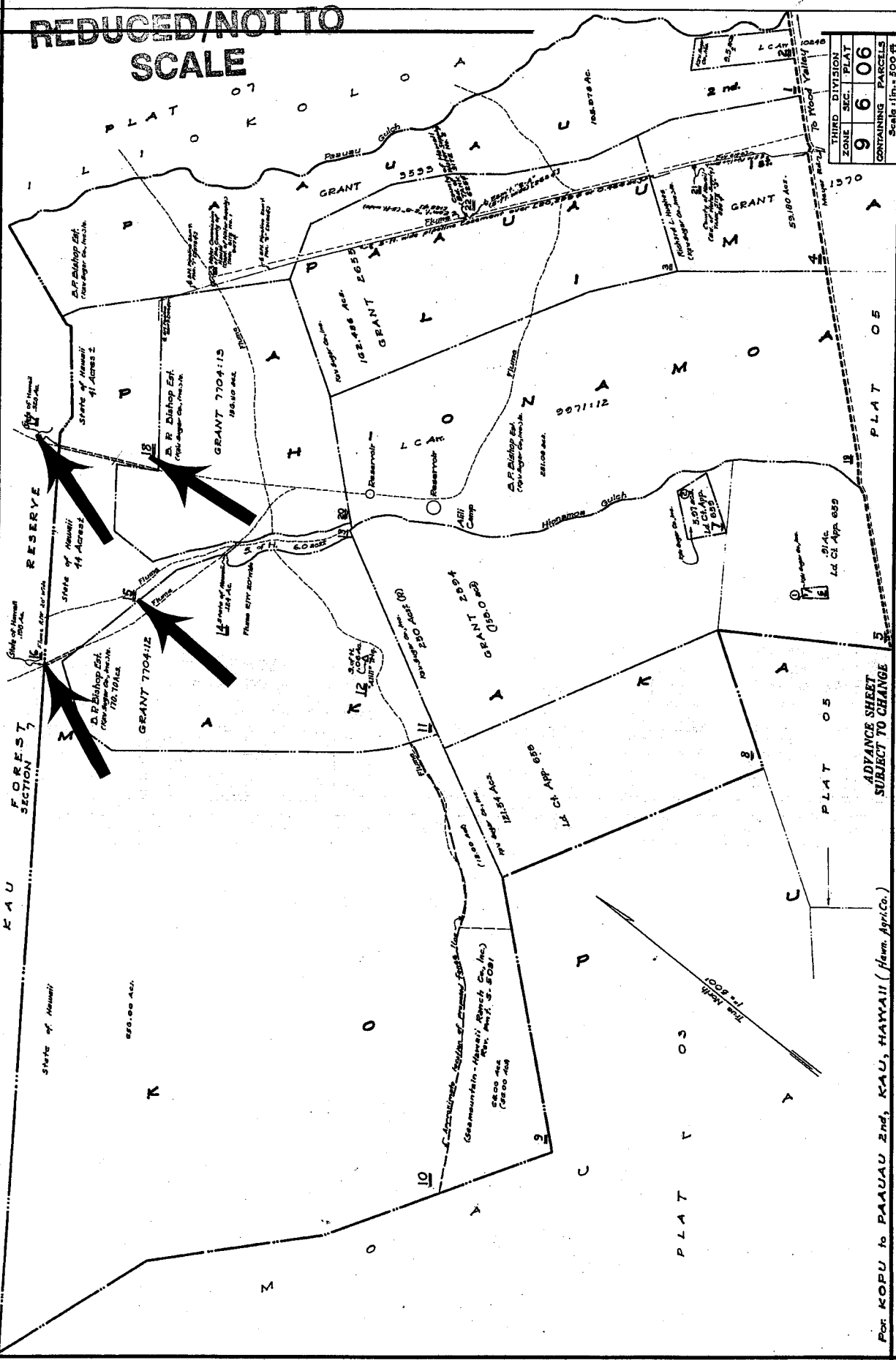
Harry M. Yada  
District Land Agent

APPROVED FOR SUBMITTAL:

A handwritten signature in cursive script, appearing to read "Peter T. Young", written over a horizontal line.

Peter T. Young, Chairperson

REDUCED/NOT TO  
SCALE



THIRD DIVISION	PLAT
9	6
06	
CONTAINING PARCELS	
Scale 1 in. = 200 ft.	

ADVANCE SHEET  
SUBJECT TO CHANGE

FOR KOPU TO PAUUAU 2nd, KAU, HAWAII (Hawaii Ranch Co.)

PRINTED

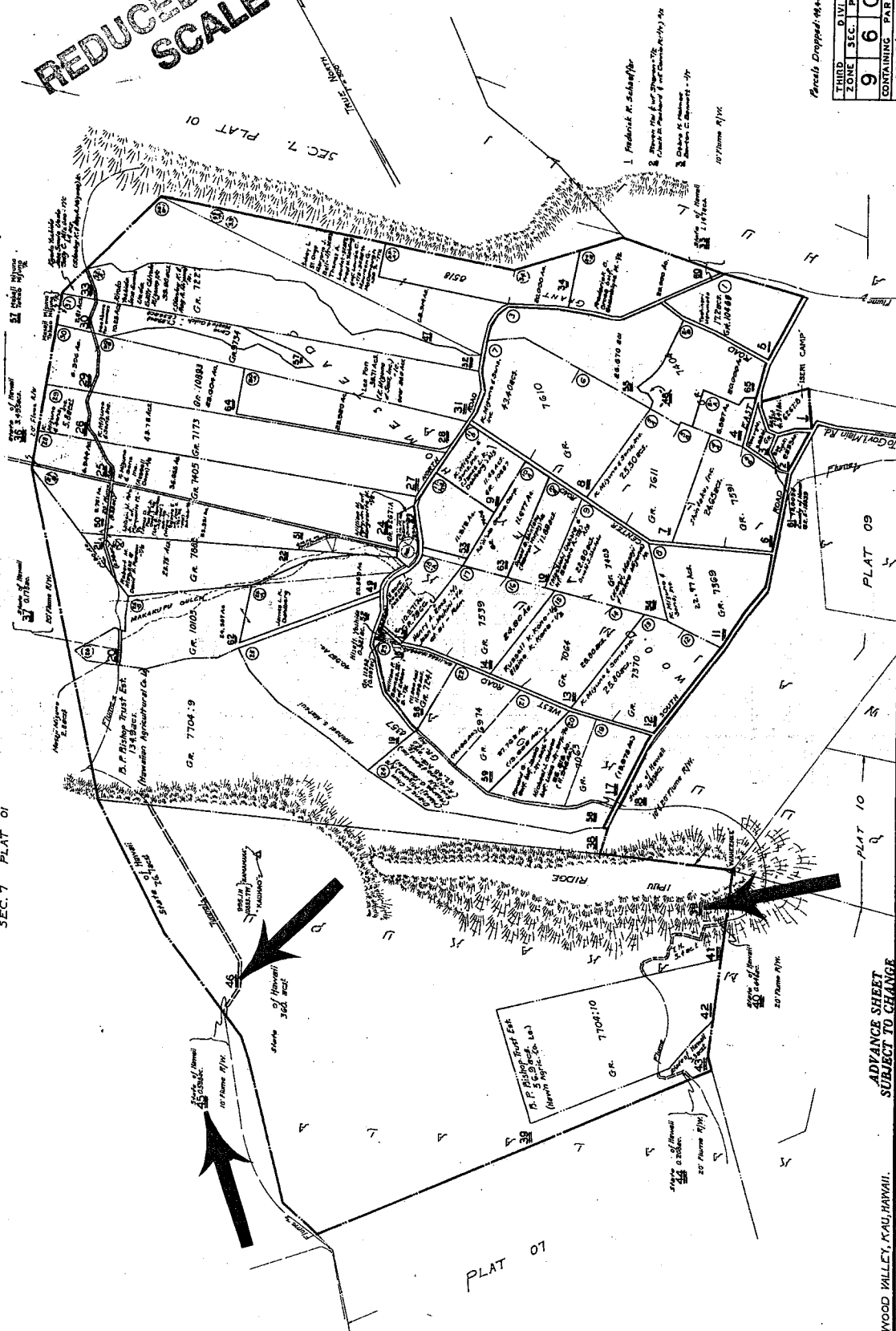
DWG. No. 2281  
Source: Survey Office  
BY: DSC & RB - Jan. '36

EXHIBIT A





**REDUCED / NOT TO  
SCALE**



Parcels Dropped: 49,48,13

THIRD	DIVISION	
ZONE	SEC.	PLAT
9	6	08
CONTAINING PARCELS		
SCALE 1"= 500'		

PRINTED

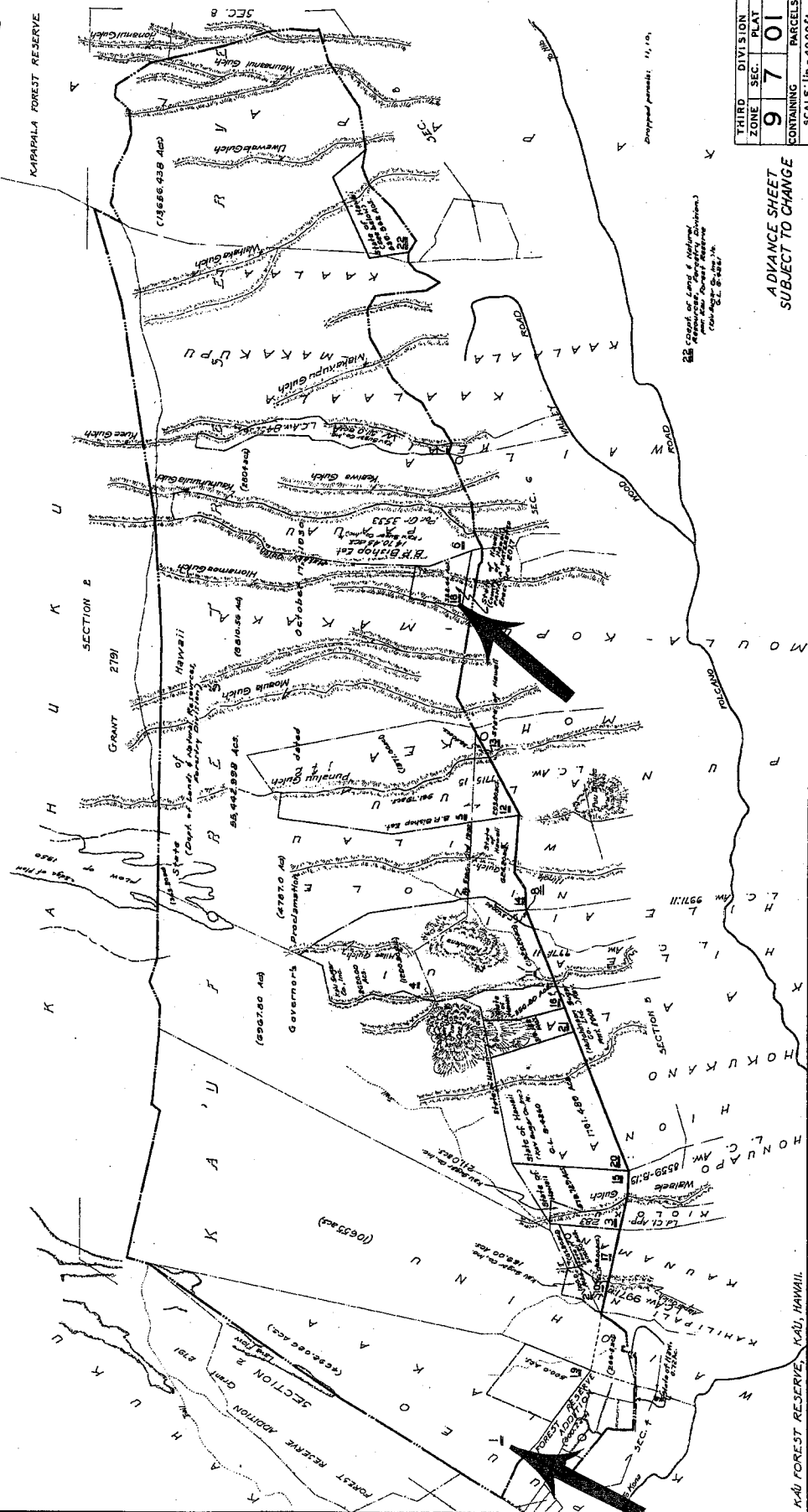
**ADVANCE SHEET  
SUBJECT TO CHANGE**

WOOD VALLEY, KAU, HAWAII.

# EXHIBIT A

9 7 01

REDUCED/NOT TO SCALE



THIRD	DIVISION	
ZONE	SEC.	PLAT
9	7	01
CONTAINING		PARCELS

**ADVANCE SHEET  
SUBJECT TO CHANGE**

CONTAINING PARCELS  
SCALE: 1" = 1000'

**SCALE**

**EXHIBIT A**

**WOOD VALLEY WATER AND FARM COOPERATIVE**

**POST OFFICE BOX 269 PAHALA, HAWAII 96777**

**TELEPHONE: (808) 928-8539 FAX: 928-6271**

2005 MAY -2 P 1:24

April 25, 2005

RECEIVED  
LAND DIVISION  
HILO, HAWAII

The Honorable Peter Young, Chairman  
Department of Land and Natural Resources  
1151 Punchbowl St.  
Honolulu, HI 96813

Re: Issuance of Revocable Permit to Noguchi Tunnel Water to Olson  
Ref. No. 05HD-087

Dear Mr. Young,

The Wood Valley Water and Farm Cooperative (WVWFC) appreciates the opportunity to review and comment on the DLNR staff report concerning the issuance of a revocable permit to Edmund C. Olson, Trustee of the Edmund C. Olson Trust, for use of water from Noguchi Tunnel in the State Lands within Conservation District above Wood Valley.

As you know, the WVWFC currently holds RP 7267 for water from Noguchi Tunnel. The Noguchi Tunnel is the only source of both potable and agricultural water for Wood Valley. The Wood Valley community, and for the last ten years, the WVWFC have maintained, serviced, and improved the water system for the valley. In the last five years, subsequent to the Board's decision to issue RP 7267 to the WVWFC, the WVWFC has invested tens of thousands of dollars and thousands of hours in sweat equity in improving its water system for agricultural water delivery and to meet State and Federal requirements for potable domestic use. Consequently, WVWFC has a keen interest in Noguchi Tunnel, and any permits associated with its use.

The WVWFC wants to be supportive of the staff recommendation to issue a revocable permit to Mr. Olson, with the following comments and suggested additional permit conditions.

**Comments:**

**Allocation of Water:** Except in times of severe drought, Noguchi Tunnel has provided ample water for both the WVWFC system and the water needs of the Keaiwa area farmers. Emphasizing the need for well-maintained delivery systems, the WVWFC does not foresee allocation issues in the future.

**Physical Set-up:** Noguchi Tunnel is actually a system of several branches at least one of which goes deep into the mountain. Currently, the Ka'u Ag intake is near the tunnel mouth. The WVWFC intake is 75 feet from the tunnel mouth. The depth of the WVWFC intake and the distance between the intakes are critical to meeting DOH requirements for the WVWFC system. The intake placement has also worked efficiently as the Ka'u Ag intake can catch all of the available water from all tunnel branches after they meet and before the flow leaves the tunnel mouth.

**EXHIBIT B**

**Security:** Security of the tunnel and the intakes has been a major concern of both Ka'u Ag and the WVVFC and a safety and health requirement. Consequently, the WVVFC and Ka'u Ag maintain a locked gate with very limited access to the entrance to Noguchi Tunnel.

**Textual Comments on Staff Report:** For clarity, the WVVFC suggests Page 3 of the report, at the end of the third paragraph, be amended to include a new sentence: "Revocable Permit No. 7085 is not transferable, and the assignment and transfer of the Ka'u Water Project to Applicant does not create any rights or entitlements to Noguchi Tunnel water or to the Revocable Permit No. 7085." Please be informed that any changes in the structure of Wood Water and Farm Cooperative permit could compromise our safe drinking water status.

**Additional Conditions:** Page 4 of the draft report notes that ultimately only one permit should be issued for Noguchi Tunnel without citation to any statute, rule, or policy requiring this limitation. The WVVFC suggests instead that given the effective workings of status quo, it should remain as is. With the addition of the following conditions to the Olson permit, the State can effectively and efficiently memorialize the actions previously agreed upon between Ka'u Ag and WVVFC and minimize the potential for future disputes. Thus, the WVVFC recommends that the following conditions be added to the proposed permit

- **Condition 1:** Applicant shall not interfere with, or conduct any activities that will adversely impact the WVVFC system and its ability to meet the requirements of the Safe Drinking Water Act and the State of Hawaii Department of Health.
- **Condition 2:** The intake of the applicant shall remain in the same location and proximity of the Noguchi Tunnel mouth unless a new intake is agreed upon in writing by the WVVFC.
- **Condition 3:** Applicant shall cooperate with the WVVFC to maintain a locked gate, with keys for both parties and the State, and other reasonable measures to secure Noguchi Tunnel from unauthorized access and use by third parties.

To summarize, the WVVFC wants to support the issuance of the Olson Revocable Permit for Noguchi Tunnel with the addition of the three conditions indicated.

Thank you again for the opportunity to comment on this report and for the diligent efforts of DLNR staff and board members over the years to facilitate community use and benefit from this important public resource.

Aloha,

Michael Schwabe, President

Cc: Mr. Bill Wong, Department of Health, Safe Drinking Water Branch  
Ms. Theresa McGeehan-Takiue, Department of Health, Safe Drinking Water Branch  
Mr. Harry Yada, Department of Land and Natural Resources  
✓ Mr. Wesley Matsunaga, Department of Land and Natural Resources  
Mr. Ed Olson, Edmund Olson Trust